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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

GAMBLING COMMISSION
COMM & LEGAL DIVISION

In the Matter of the Revocation of the)	
License to Conduct)	GC No. CR 2009-00887
Gambling Activities of:)	OAH No. 2009-GMB-0061
)	
PENN, DAVID JR.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Licensee)	AND INITIAL ORDER AND DEFAULT
)	ORDER
)	

STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before Sherry Clark Peterson, duly appointed Administrative Law Judge, in the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington, on September 21, 2009, in the matter of the revocation of the Card Room Employee license of David Penn, Jr., license number 68-26622.

The Washington State Gambling Commission (Commission) was represented by H. Bruce Marvin, Assistant Attorney General. Special Agent Julie Sullivan appeared as a witness for the Gambling Commission. David Penn, Jr. (Licensee) failed to appear.

On March 15, 2009, the Director of the Gambling Commission caused a Notice of Administrative Charges to be issued against David Penn, Jr. alleging that his license to act as a public card room employee was subject to revocation based upon his conviction in the Benton County District Court, Cause No. K42441, of Assault 4th Degree, on December 9, 2008, for failure to disclose that arrest within 30 days of the violation, and for failure to disclose a conviction in 1999 for Assault in the 4th Degree Domestic Violence. David Penn, Jr. timely applied for an Adjudicative Proceeding. The Commission duly notified David Penn, Jr. of the time and the place of the Administrative Hearing. There were fifteen (15) exhibits admitted and testimony was offered by one witness, Special Agent Julie Stewart.

The Administrative Law Judge, having considered the evidence, now enters the following findings of fact:

FINDINGS OF FACT

1. Card Room Employee Licensee David Penn, Jr. was employed by Classic Island Casino in Kennewick, Washington. On June 10, 2008 Mr. Penn submitted a Public Card Room Employee Application. On that application he was asked:

Have you ever:

1. Forfeited bail or paid a fine over \$25 (incl. traffic fines)
2. Been arrested?
3. Been charged with a crime:
4. Been convicted?
5. Been jailed?
6. Been placed on probation?

Mr. Penn marked the box "Yes" and disclosed he had been convicted of Delivery of a Controlled Substance in Kennewick, Benton County, Washington in 1998. This was his only disclosure.

2. On May 28, 2009 Mr. Penn signed a Card Room Employee Renewal Application. The renewal application asks:

During the past twelve (12) months have you:

1. Forfeited bail or paid a fine over \$25 (incl. traffic fines)
2. Been arrested?
3. Been charged with a crime:
4. Been convicted?
5. Been jailed?
6. Been placed on probation?
7. Been under court supervision?

Mr. Penn marked the box "No". Above his signature the Renewal Application clearly states:

I certify under penalty of perjury that all the answers are true, correct and complete. I understand that untruthful or misleading answers are cause for denial of a license and/or revocation of any license granted. I hereby authorize investigation of my criminal history, financial records and other sources as necessary for licensing.

3. In his Public Card Room Employee Application Mr. Penn did not disclose he had been arrested and convicted for Assault 4th Domestic Violence in 1999. In his Card Room

Employee Renewal Application Mr. Penn did not disclose that he had been arrested for Assault 4th in December 2008 and had pled guilty to that charge in December 2008. As part of his sentence he has to serve two (2) years probation.

2. On or about June 4, 2009, Commission Special Agent Julie Sullivan was assigned to investigate whether or not Mr. Penn continued to qualify for a gambling license after a recent assault conviction. The Commission discovered the conviction after a routine, annual criminal history check.

3. As part of her criminal history investigation Special Agent Sullivan examined the Washington State Judicial Information System record for Mr. Penn. Special Agent Sullivan verified that Mr. Penn had a 2008 conviction of 4th Degree Assault, Domestic Violence as well as a similar conviction in 1999 that had not been disclosed to the Commission.

4. In addition to failing to disclose the two (2) 4th Degree Assault, Domestic Violence convictions, Mr. Penn did not disclose the following convictions/commitments:

5/12/2008	Operate Motor Vehicle without Insurance
1/17/2007	Speeding 10 MPH Over Limit
1/17/2007	Failure to Renew Expired Registration
1/17/2007	No Valid Operator's License
7/21/2005	Disorderly Conduct
4/11/2004	Speeding 13 MPH Over Limit
3/15/2002	Obstructing a Police Officer
3/15/2002	Possession of Marijuana
6/4/2000	Exceed Max. Vehicle Audio Level
4/6/1999	Assault, Domestic Violence
3/5/1998	Driving While License Suspended
7/29/1994	Criminal Trespass, 2 nd Degree
5/3/1994	Permit Minor Consume/Possess Liquor

Despite the fact Mr. Penn did not truthfully disclose his criminal history, a license was issued.

5. Mr. Penn did not appear for the hearing scheduled for September 21, 2009 at 9 a.m. The lobby for the Gambling Commission was checked as was the parking lot. Mr. Penn did not call in nor did he provide written notice requesting a continuance in this hearing.

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 34.05.485(1)(c), 34.12.030(1), 9.46.095 and WAC 230-17-025.

2. During the time material hereto, the licensee, David Penn, Jr., has been the holder of a public card room employee license authorizing him to act as a public card room employee and is subject to the provisions of RCW 9.46.075 and WAC 230-03-085.

3. The Commission has the broad purpose of protecting the public by insuring that those activities authorized by chapter 9.46 RCW do not maliciously affect the public and do not breach the peace. RCW 9.46.010. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control. All factors incident to the activities authorized in chapter 9.46 RCW shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. RCW 9.46.010.

4. It is the affirmative responsibility of each licensee to establish by clear and convincing evidence his continuing qualifications for licensure. RCW 9.46.153(1). Each holder of a license issued pursuant to chapter 9.46 RCW is subject to continuous scrutiny regarding his general character, integrity and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7).

5. The Commission may suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest when a licensee has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto. RCW 9.46.075(1). We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075 and WAC 230-03-085(1). The record establishes that the licensee, while he was the holder of a card room employee license, obtained a license by fraud, misrepresentation by failing to disclose his prior arrests and convictions; by committing a crime that involved physical harm to an individual in that he has been convicted twice for 4th Degree Domestic Violence; by making a misrepresentation of or failing to disclose a material fact by not disclosing the extent of his prior arrests and convictions; and by failing to establish by clear and convincing evidence his qualifications for licensure. The Commission may suspend or revoke David Penn, Jr.'s card room employee license under RCW 9.46.075(1) and WAC 230-03-085(1).

8. We (the Commission) may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4). WAC 230-03-085(5). Because Mr. Penn is under probation for two years commencing December 9, 2008 the Commission may suspend or revoke David Penn, Jr.'s Card Room Employee license under WAC 230-03-085(5).

9. The Commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest when a licensee fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter. RCW 9.46.075(8). The record establishes that the licensee, David Penn, Jr., committed the crime of 4th Assault, Domestic Violence in December 2008, that he was convicted of 4th Assault, Domestic Violence by a court of competent jurisdiction, and that David Penn, Jr. is currently serving a period of community custody. The commission may revoke David Penn, Jr.'s card room employee license under RCW 9.46.075(8).

10. To closely control all factors incident to the activities authorized in chapter 9.46 RCW, the provisions of the chapter shall be liberally construed to achieve such ends. The general public can find itself in a particularly vulnerable position should a person licensed to conduct gambling activities fail to discharge his occupation with a sense of justice and honesty. The evidence of the commission has established that in the public interest, the revocation of the license to act as a public card room employee of the licensee, David Penn, Jr., is in the public interest.

11. RCW 34.05.440(2) provides in relevant part: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." The Licensee, David Penn, Jr., is in default for his failed to appear for the September 21, 2009, hearing.

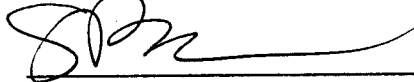
From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the card room employee license of David Penn, Jr. be and the same is hereby revoked.

That the Licensee, David Penn, Jr., is in DEFAULT. A request that this order be vacated must be filed within seven days of service of this order, stating the grounds relied upon. RCW 34.05.440(3).

DATED at Olympia, Washington, this 15th day of October, 2009.



Sherry Clark Peterson
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2).

RCW 34.05.464 governs the review of initial orders. WAC 230-17-090(1).

Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed. WAC 230-17-090(2).

Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition. WAC 230-17-090(3).

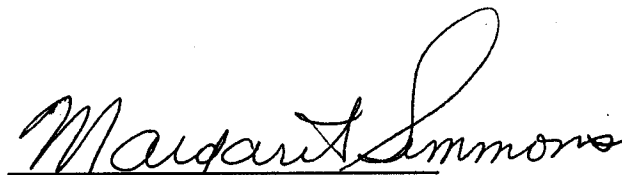
Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed. WAC 230-17-090(4).

Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us. WAC 230-17-090(5).

Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed. WAC 230-17-090(6). After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order. WAC 230-17-090(7).

Certification of Mailing

I certify that I mailed true and exact copies of the **Findings of Fact, Conclusions of Law and Initial Order and Default Order** to the following parties, postage prepaid this 15th day of October 2009 at Olympia, Washington.


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